



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents  
United States Patent and Trademark Office  
P.O. Box 1450  
Alexandria, VA 22313-1450  
www.uspto.gov

SIM & MCBURNEY  
330 UNIVERSITY AVENUE  
6TH FLOOR  
TORONTO ON M5G 1R7  
CANADA

**COPY MAILED**

**MAR 29 2005**

**OFFICE OF PETITIONS**

In re Application of  
Cates, et al.  
Application No. 10/663,722  
Filed: September 17, 2003  
Attorney Docket No. 1038-1268 MIS  
For: MULTIVALENT IMMUNOGENIC  
COMPOSITION CONTAINING RSV SUBUNIT  
COMPOSITION AND INFLUENZA VIRUS  
PREPARATION

DECISION  
ON PETITION

This is a decision on the reconsideration petition under 37 CFR 1.137(b), filed March 4, 2005, to revive the above-identified application.

This application became abandoned for failure to timely and properly reply to the Notice to File Missing Parts of Nonprovisional Application, mailed December 11, 2003, which required petitioners to file replacement drawings, an executed declaration, and a surcharge within an extendable two month period from the mail date of the Notice.

On June 14, 2004 petitioners filed a request for a four month extension of time and required fee, replacement drawings, and a surcharge. On June 25, 2004 the Office mailed a Notice of Incomplete Reply that noted the June 14, 2004 response was incomplete due to the omission of an executed declaration and informed petitioner that the original period for reply set in the December 11, 2003 Notice remained in effect.

Therefore, the application became abandoned on June 12, 2004 for failure to timely submit an executed declaration. Applicants' first petition to revive, filed September 30, 2004, was dismissed on December 3, 2004 for failure to submit a proper reply. The filing of the instant reconsideration petition precedes the mailing of a Notice of Abandonment.

A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m);
- (3) a statement that the **entire** delay in filing the required reply

from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

- (4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(d).

The instant reconsideration petition satisfies the above-listed requirements. Petitioners have filed an acceptable, executed declaration, the petition fee, and a statement as to the unintentional nature of the delay in responding to the December 11, 2003 Notice.

Therefore, the petition is granted.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3230.



E. Shirene Willis  
Senior Petitions Attorney  
Office of Petitions